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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 09/912,494
Filing Date: July 24, 2001
Appellant(s): WONG ET AL.

James Cordek
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 27, 2006, appealing from the Office action mailed July 1, 2003.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

A Decision on Appeal (Appeal No. 2004-0450) for patent application U.S. Serial No. 09/785,936, is enclosed in the Related Proceeding Appendix of the instant appeal brief filed April 27, 2006, of which the Decision on Appeal was mailed to Appellants on May 4, 2004, and patent application U.S. Serial No. 09/785,936 was abandoned on August 6, 2004.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

EP Patent Application 0 380, 343 A2, Simell et al, (August 1, 1990), pp. 1-11

6,313,328	Ulrich et al	2-1999
6,313,273	Thomas et al	08-1999
4,914,029	Caransa et al.	04-1990

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

35 U.S.C. 102/103

Claims 79-85 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 0 380 343 as evidenced by Caransa et al. US 4,914,029.

Claims 79-85 are drawn to a composition comprising soy protein isolate containing low amounts of ribonucleic acid and phytic acid, which is obtained by treatment of raw soy protein isolate with phytase from *Aspergillus niger* at a pH of 4-5 and a temperature of 20-70 °C for about 30 minutes to about 4 hours.

The EP 0 380 343 teaches a composition comprising soy protein isolate containing low amounts of phytic acid. EP 0 380 343 discloses subjecting the soy protein isolate to treatment with FINASE at a pH of from 2.0 to 6.0 at a temperature of from 20 °C to 50 °C for 1.0 to 8.0 hours (claim 4) and exemplifies temperature of 55 °C, and about 4 hours (page 10, line 5). The second Wong declaration (Exhibit J of the Brief) confirms that FINASE as disclosed by EP 0 380 343 does indeed inherently degrade RNA and can achieve the low levels of phytate and ribonucleic acid at a pH, temperature, and reaction time within the disclosure of EP 0 380 343. At page 9 of EP 0 380 343, Tables 2 and 3, such low amounts of phytic acid are detected that the Tables reflect 0.0% phytic acid with increasing enzyme dosages for phytate reduction of soy protein isolate. Examples 2-4 in EP 0 380 343 used up to 1000 PU of FINASE at pH 5.5 and 40 °C for 4 hours (page 8, lines 1-4, and page 9, lines 26-27). Also, 500 PU Finase was used at pH 5.0 and 55 °C for 4 hours in example 5 (page 9, line 26 and page 10, lines 5 and 9). In example 5, all of the various inositol phosphate

concentrations were reduced to zero (page 10, Table 4), indicating strong acid phosphatase activity under these conditions.

EP 0 380 343 and Appellants' enzyme preparations appear to be the same. Appellants' enzyme preparation is a commercially available phytase preparation obtained from *Aspergillus niger*. EP 0 380 343 at page 6, lines 26-28, states that FINASE, formerly termed ECONASE EP 43 enzyme, is preferred to be used in their disclosed process and is also described in USSN 07,242,243, which is now US 4,914,029. In 4,914,029, FINASE is referred to as ECONASE EP 43 series of enzyme preparation which is obtained from *Aspergillus niger*. Hence, the disclosed enzyme preparation and Appellants' claimed enzyme preparation are obtained from the same source and would appear to be the same or nearly the same commercially available enzyme preparations. Although the specification does not identify the phytase/acid phosphatase enzyme beyond referring to a commercially available source, support for the contention that the instant and reference enzyme are the same is in the third Wong declaration (Exhibit U of the Brief) which states that the acid phosphatase enzyme preparation used was FINASE, the same one as in EP 0 380 343.

The specific ranges of 0.45% or less phytic acid, 0.2% or less phytic acid and 0.1% or less phytic acid are clearly ranges which fall within the ranges disclosed by the reference (for example less than 1.1% phytic acid because Table 3 depicts 0.0 which is less than 1.1 also depicted in Table 3, hence this reads on a range of less than 1.1% phytic acid of which encompasses any percent amount such as less than 0.45% or 0.2% or 0.1%). The low amounts of RNAs claimed, at most 4000 mg/kg ribonucleic

acids (RNAs), less than 2000 mg/kg RNAs, 1500 mg/kg RNAs, are inherent to the disclosure of EP 0 380 343 because the FINASE is used under conditions that result in degradation of RNA too. Exhibit J, filed by Appellants, clearly supports that FINASE as disclosed by the EP 0 380 343 does indeed inherently degrade RNA under conditions disclosed by EP 0 380 343. Appellants are using the same enzyme activity, phytase, from the same source, under the same conditions. Thus, it naturally follows that the same results must be obtained.

However, in the alterative that there is some difference between the claims and the cited reference, then such difference is considered to be so slight as to render the claims *prima facie* obvious over the cited reference. It would have been obvious to one of skill in the art at the time the claimed invention was made to degrade ribonucleic acids along with phytic acid because of enzymatic activity of FINASE which can degrade phytate as well as can be expected to degrade RNAs. Further, the reference does not disclose the absolute presence of ribonucleases in the composition comprising soy isolate. Therefore, the claims are alternatively considered to be obvious over the cited reference.

35 U.S.C. 103

Claims 79 and 86 stand rejected under 35 U.S.C. 103(a) as being unpatentable over EP patent (EP 0 380 343), cited above, in view of Ulrich et al (US 6,313,328).

Claim 79 is discussed above, and claim 86 is further drawn to the composition as discussed above, of which contains less than 3000 ppm phosphorous.

EP patent is discussed above. The claims differ from EP 0 380 343 in that there appears to be no disclosure of phosphorous content of less than 3000 ppm in the composition.

Ulrich et al., cited herein, teach that oilseeds such as soybean wherein the phosphorous content of the seed oil is less than 3000 ppm or more specifically determined to be 365 ppm, can be expected to contain a phosphorous content of from about 600 ppm to about 800 ppm. Note col. 6, lines 60-65 and col. 7, lines 55-58 and lines 65-66. Although the reference describes this amount of phosphorous content of the desolventized crude oil of the total recovered oil of a whole corn grain sample, the reference clearly suggests that the flaking method for facilitating extracting a corn oil can be used for processing other oilseeds such as soybean (note column 6, lines 62-65 and note column 7, lines 55-58).

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was filed to determine the phosphorous content of the composition comprising a soy protein isolate as disclosed by the EP 0 380 343 and determine that the composition with a high standard of expected results that phosphorous content is less than 3000 ppm as disclosed or at least suggested by Ulrich et al. Clearly one of skill in the art would have expected successful results for determining a composition comprising oilseed or soy protein isolate to contain less than 3000 ppm phosphorous as Ulrich et al. teach the same. There is no reason to expect that the soy protein isolate or the total composition comprising a soy protein material would not contain less than 3000 ppm since Ulrich clearly discloses several ppm amounts of phosphorous of which are

clearly within the range of less than 3000 ppm and that these amounts are determined for compositions comprising oilseeds such as soy material. Thus, in the absence of persuasive evidence to the contrary the claims are clearly rendered prima facie obvious.

35 U.S.C. 102/103

Claims 79-85 stand rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Thomas et al (US 6,313,273).

Claims are discussed above.

Thomas et al. teach a composition comprising soy protein isolate, col. 5, lines 4-10, that is low in phytic acid (less than 0.065%) and no more than about 0.4 mg of RNAs, note col. 6, lines 45-50, of which is clearly within the range of no more than 4000 mg/kg RNAs. Further, the reference is devoid of any teaching of ribonuclease enzymes being present in the composition. Note col. 5, lines 41-42 and col. 6, lines 1-5, 10-15 and 40-52; and 53-55. Also note col. 9, lines 1-5 and 14-15 and 19-22 and col. 10, lines 33-37, and col. 11, lines 50-55 and 60-67 and col. 12, lines 45-50 and 60-67. Phosphorous is disclosed to be present in the composition. Thomas et al clearly disclose that their process produces a soy protein material having advantages over other soy proteins produced under different conditions, wherein their soy protein has reduced levels of RNA (i.e. nor more than 0.4 mg RNA), note column 6, lines 23-26 and 49-50.

The claims are identical to the cited disclosure, and are therefore, considered to be anticipated by the teachings of the cited reference. A composition devoid of

ribonuclease enzymes is inherent to the teachings of the cited reference or can at least be inferred in that the reference does not disclose the presence of any ribonuclease enzymes. However, in the alternative that the claims are different in some way or that there is some unidentified claim characteristic for which is not disclosed by the cited reference, then the difference is considered to be so slight as to render the claims *prima facie* obvious over the cited prior art.

It would have been obvious to one of ordinary skill in the art to provide for a composition substantially devoid of ribonuclease enzymes as the reference discloses that commercial grade pectinases are enzymes which reduce phytic acid and RNAs. Thus, one of skill would have been motivated to select for pectinases and not a ribonuclease. Clearly in the alternative the claims are at least prima facie obvious over the cited prior art. The ranges of low RNAs and phytic acid as claimed are anticipated by the cited prior art but in the alternative would have been expected to be in no more than 4000 mg/kg, less than 2000 mg/Kg, 1500 mg/kg or less than 0.45%, 0.2% and 0.1%, respectively, based upon the teachings of the cited prior art. The claims are clearly taught by the cited prior art and the composition is at least prima facie obvious over the cited reference.

35 U.S.C. 103

Claims 79 and 86 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al (US 6,313,273) in view of Ulrich et al (US 6,313,328) both discussed and cited above.

Claims are discussed above as well.

Claims differ from Thomas et al. in that phosphorous of less than 3000 ppm being contained within the composition is not disclosed.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was filed to provide for the composition as disclosed by Thomas et al. containing less than 3000 ppm phosphorous as disclosed by Ulrich et al. Phosphorous is clearly disclosed by Thomas et al. to be contained in the composition, note col. 12, lines 60-65. Thus, it would have been an obvious modification to determine the phosphorous content to be less than 3000 ppm as Ulrich clearly discloses that less than 3000 ppm is expected. Thus, the claims are *prima facie* obvious over the cited prior art.

(10) Response to Argument

35 U.S.C. 102/103

Claims 79-85 stand rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over EP 0 380 343.

The 102(b) rejection

The argument that in order to constitute anticipation, all material elements of a claim must be found in one prior art source, is noted. However, the fact that a characteristic is a necessary feature or result of a prior-art embodiment is and of itself enough for inherent anticipation, even if that fact was unknown at the time of the prior invention (see also Toro Co. v. Deere & Co., 355 F.3d 1313, 1320, 69 USPQ2d 1584, 1590 (Fed. Cir. 2004). EP 0 380 343 teaches an enzyme preparation for producing a

composition comprising a soy protein material. The enzyme preparation contains acid phosphatase which as disclosed by the EP 0 380 343 (EP reference), degrades soy protein material under the identical conditions of pH and temperature as required by Appellants' disclosure.

Thus, the claimed ranges of at most 4000 mg/kg ribonucleic acids (RNAs), less than 2000 mg/kg RNAs, 1500 mg/kg RNAs, 0.45% or less phytic acid, 0.2% or less phytic acid and 0.1% or less phytic acid are ranges which fall within the ranges disclosed by the EP 0 380 343 wherein the phytic acid content can be 0.0%, see Table 1 and 3 at pages 8-9; and wherein the RNA content is degraded under the identical conditions as Appellant's soy protein material its RNA ranges are inherent to EP 0 380 343. Furthermore, note that that a soy protein material containing "at most" 4000 mg/kg RNA and being substantially devoid of ribonuclease enzymes reads on a soy protein material that can contain no RNA and also no ribonuclease enzymes.

Further, although EP 0 380 343 is silent as to the content of the RNA or ribonucleases enzymes of the soy protein material, the fact that it is silent does not mean that these are present in any greater amounts than what is claimed.

First, EP 0 380 343 does disclose an enzyme preparation comprising acid phosphatases as admitted by Appellants' own brief, note page 9, line 19. Hence the presence of an acid phosphatase will inherently provide for the degradation of RNA at low levels falling within the claimed levels of RNA. Second, EP 0 380 343 clearly discloses the presence of phytic acid which is degraded by acid phosphatase. Appellant's own declaration filed under 37 CFR 1.132 shows acid phosphatase

degrades phytic acid. Hence, this shows that the degradation of RNA is a necessary consequence of the acid phosphatase in the enzyme preparation and conditions employed by EP 0 380 343. The conditions used by Appellants are identical to EP 0 380 343. Also, the ranges of RNA and ribonuclease as claimed do not necessarily require any lower limit wherein the RNA needs to be present nor are the ribonucleases required to be present since the claims require them to be substantially devoid.

Furthermore, Appellants allege that they provided experimental proof that the phytase levels of a soy protein material could be reduced with a phytase degrading enzyme in accordance with the process of EP 0 380 343 without producing a soy protein material having the claimed levels of RNA, note the declaration filed under 37 CFR 1.132 attached as Exhibit B. However, the experiment was conducted with Natuphos and not the disclosed Finase. Therefore, the declaration is not commensurate in scope with EP 0 380 343 or the claimed subject matter to support any basis of experimental proof. Further, the declaration is not considered by the examiner as conclusive evidence in support of Appellants alleged criticality for the claimed composition. Finase and Natuphos are not the same enzyme preparations and Finase is disclosed by EP 0 380 343 to comprise acid phosphatase and not non-acid phosphatase as alleged by Appellants arguments. Thus, the declaration is neither persuasive nor on-point with the art rejection of record.

With respect to Appellants' alleged arguments regarding the declaration filed under 37 CFR 1.132, filed March 26, 2004, noted as attached Exhibit J, it should be noted that the declaration did not carry out the experiment under conditions

commensurate in scope with EP 0 380 343 or claimed subject matter and instant disclosure. EP 0 380 343 discloses subjecting the enzyme treatment at much higher temperatures of 55 °C, and for twice as long (i.e. 4 hours). For example, note EP 0 380 343, page 10, line 5. Therefore, Appellants arguments are not persuasive. However, the declaration or Exhibit J is clearly on-point that Finase as disclosed by EP 0 380 343 does indeed inherently degrade RNA.

Appellants' Exhibit J supports the Examiner's argument that EP 0 380 343 inherently anticipates the claimed composition based upon the facts disclosed by EP 0 380 343. As disclosed by EP 0 380 343 and shown by Appellants' Exhibit J under appropriate conditions the RNA will be degraded in the soy protein material at a level of "at most" 4000 mg/kg", "at most 2000/mg/kg", and "at most 2000 mg/kg". These level range amounts have no lower limit and can read on complete degradation of RNA wherein no RNA would be present in the soy protein material composition. Therefore, the argument that a soy protein material can be treated with a FINASE enzyme preparation containing an acid phosphatase under conditions disclosed in EP 0 380 343 without producing a soy protein material containing at most 4000 mg/kg RNA is not persuasive.

Thus, the teachings of EP 0 380 343 inherently result in the claimed compositions of claims 79-85 because the same conditions as disclosed by Appellants own specification and disclosure are used as disclosed in EP 0 380 343 . The Exhibit J as discussed above does not use the same conditions which is why the results of samples 1 and 2 were different. EP 0 380 343 uses the conditions employed by

Appellants' own disclosure and not those of which are set forth in Exhibit J, which is why the Exhibit J is not persuasive because it is not commensurate in scope with the instant disclosure, claimed subject matter, nor the cited prior art. The examiner does not assert that all conditions will yield the same results as argued by Appellants, but as discussed above, the conditions as disclosed by EP 0 380 343 and used by Appellants will always and necessarily determine the results.

The argument that phytase enzymes are ineffective to reduce ribonucleic acids in soy protein material is noted but not persuasive because the enzyme preparation as argued of record is preferably FINASE which is clearly shown to degrade and reduce ribonucleic acids, as shown by Appellants' own Exhibit J. Under the disclosed conditions of EP 0 380 343. Claimed ranges of RNA as present in the claimed composition will be obtained by EP 0 380 343 and comprised by the disclosed composition. Hence, the soy protein material containing "at most" 4000 mg/kg of ribonucleic acid can be a necessary consequence of the process disclosed by EP 0 380 343 , and EP 0 380 343 , therefore, does indeed inherently anticipate the claims 79-85.

The 103 rejection

Appellants argue that there is a missing link in the logic of the obviousness rejection wherein one cannot progress in a logical progression of a showing of obviousness without recognizing that acid phosphatase enzymes degrade RNA. Firstly, an acid phosphatase cleaves substrate phosphate groups. The substrate of issue in the instant case is RNA. RNA contains phosphate groups and these groups are actively cleaved by an acid phosphatase. These points are well known and recognized in the

prior art. The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988); In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). A phosphatase by definition is an enzyme that cleaves phosphate groups. For an acid phosphatase to degrade RNA by cleaving phosphate groups from RNA is clearly an expected successful result because RNA is comprised of phosphate. EP 0 380 343 clearly teaches that an acid phosphatase is used to treat a soy protein material as claimed herein.

The soy protein material is well known to contain RNA and would have been expected to be present therein. To treat a soy protein material with acid phosphatase is clearly taught by the cited prior art. One of ordinary skill in the art would have expected successful results for the degradation of RNA comprised by the soy protein material during treatment of the disclosed material with the disclosed acid phosphatase. The motivation to degrade RNA need not be present since the degradation thereof is inherent to the activity of the acid phosphatase upon a soy protein material under identical conditions as disclosed by EP 0 380 343 and Appellants' own disclosure.

Finase as disclosed by EP 0 380 343 will degrade RNA and the amount of RNA degraded is determined by the conditions employed. The conditions employed by Appellants' own disclosure are identical to the conditions employed by EP 0 380 343. Hence the amount of RNA degraded would have been expected to be within the similar

ranges obtained by Appellants. Furthermore, as noted above, the ranges as claimed do not necessarily require any RNA to be present; "at most" as claimed defines no lower limit as such and hence none need be present in the composition as claimed. With respect to the argument that RNA is a different compound from phytate and acid phosphatase would not have been expected to degrade RNA is noted.

However, FINASE degrades both as taught, or at least suggested, by the cited prior art and shown by Exhibit J. Exhibit J clearly supports Examiner's position regarding the inherent presence of degraded RNA since the identical enzyme preparation under identical conditions treating an identical soy protein material are all clearly disclosed by the cited prior art. Furthermore, in response to Appellants' argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the appellant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Hence, in the alternative the claims remain prima facie obvious over the cited prior art.

35 U.S.C. 103

Claims 79 and 86 stand rejected under 35 U.S.C. 103(a) as being unpatentable over EP patent (EP 0 380 343), cited above, in view of Ulrich et al (US 6,313,328), also cited above.

The 103 rejection

In response to Appellant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the appellant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In addition, although the Ulrich et al reference describes this amount of phosphorous content of the crude oil of the total recovered oil of a whole corn grain sample, the reference clearly suggests that the flaking method for facilitating extracting a corn oil can be used for processing other oilseeds such as soybean (note column 6, lines 62-65 and note column 7, lines 55-58). Appellants' own disclosure and EP 0 380 343 both utilize the flaking method for processing soybean.

Further, in response to Appellants' argument that two different methods are disclosed by the cited prior art combination is noted. However, Ulrich et al is not combined for its teaching of a process but for its teaching of how much phosphorous is contained by its soy protein material. As the RNA is degraded in the material its phosphorous content based upon Ulrich et al's teaching of phosphorous content of

soybean material would have been expected to be less than 3000 ppm because soybean protein material is known to contain this amount. Furthermore, the fact that appellant has recognized another advantage (i.e. degraded RNA) which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See Ex parte Obiaya, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985). The claims, therefore, remain prima facie obvious over the cited prior art.

35 U.S.C. 102/103

Claims 79-85 stand rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Thomas et al (US 6,313,273).

The 102 and 103 rejection

Appellants allege that the declaration filed under 37 CFR 1.131 overcomes the cited reference, Thomas et al. However, it was not timely filed before the filing of an appeal brief (see 37 CFR 41.33(d)(2)) as indicated on the Advisory Action mailed out on June 23, 2006, and was therefore, not entered. Further, the declaration filed under 37 CFR 1.131 (appendix U) even if timely filed would not be considered to be sufficient because original exhibits of drawings or records, photocopies of laboratory notes, etc., must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained in accordance with 37 CFR 1.131. (b). The declaration does not establish the facts of the case in such a way to show reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent

reduction to practice. Therefore, Appellants' declaration filed with the brief does not properly reduce Appellants' claimed invention to practice before the filing date of Thomas et al. (US Patent No. 6,313,273).

35 U.S.C. 103

Claims 79 and 86 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas et al (US 6,313,273) in view of Ulrich et al (US 6,313,328), both discussed above.

The 103 rejection

Appellants allege that the declaration filed under 37 CFR 1.131 overcomes the cited reference, Thomas et al. However, it was not timely filed before the filing of an appeal brief (see 37 CFR 41.33(d)(2)) as indicated on the Advisory Action mailed out on June 23, 2006, and was therefore, not entered. Further, the declaration filed under 37 CFR 1.131 (appendix U) even if timely filed would not be considered to be sufficient because original exhibits of drawings or records, photocopies of laboratory notes, etc., must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained in accordance with 37 CFR 1.131. (b). The declaration does not establish the facts of the case in such a way to show reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice. Therefore, Appellants' declaration filed with the brief does not properly reduce Appellants' claimed invention to practice before the filing date of Thomas et al. (US Patent No. 6,313,273).

(11) Related Proceeding(s) Appendix

Copies of the court or Board decision(s) identified in the Related Appeals and Interferences section of this examiner's answer are provided herein.

(12) Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/DKW/

Deborah K. Ware

Conferees:

/Michael G. Wityshyn/
Supervisory Patent Examiner, Art Unit 1651

/JON P WEBER/

Supervisory Patent Examiner, Art Unit 1657